HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.23542 OF 2006

Between:

M/s.Thejo Engineering Services (P) Ltd. …Petitioner

AND

Commercial Tax Officer, Gudur and others.
...Respondents

: O R D E R :

Counsel for the Petitioner : Shri Shaffin
for Shri C.V.Narasimham

15th November, 2006

Per G.S. Singhvi, C.J.

Having failed to persuade Joint Commissioner (CT), Legal, Hyderabad (respondent No.3) to entertain its prayer for stay of the demand notice issued by Commercial Tax Officer, Gudur (respondent No.1), the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

The petitioner is a private limited company. It is engaged in the manufacture and sale of rubber products and adhesives. It has manufacturing units at Gudur in Andhra Pradesh and at Ponneri and Athipetti in Tamil Nadu. For the assessment year 2001-02, the petitioner claimed exemption under Section 6-A of the Central Sales Tax Act, 1956 (for short, 'the Central Act') to the tune iof Rs.2,08,93,930/- by asserting that it had stock transferred rubber products and adhesives manufactured in the regular course of business to its branches outside the State for being used in the execution of work contracts and the branches had also effected intra-State sales of a portion of the rubber products and adhesives received by way of stock transfer after paying the local taxes due on such sales. By an order dated 18-2-2003, respondent No.1 accepted the petitioner's claim for exemption. After two years and six months, Deputy Commissioner (CT) (respondent No.2), Nellore issued notice dated 29-8-2005 to the petitioner proposing to make re-assessment under Section 9(2) of the Central Act by withdrawing exemption amounting to Rs.2,08,93,930/-. The reasons which prompted respondent No.2 to issue notice for re-assessment were:

"1) The assessee has not produced audited balance sheet, profit and loss account, and Annual Report. The trading account available in the file does not throw any light on the business activities of the assessee company.

2) As per work orders placed by consuming industries, rubber products were manufactured to the specifications of clients and despatched directly to client industries. This amounts to inter state sales taxable under Section 3(a) to CST Act, 1956."

After considering the objections filed on behalf of the petitioner, respondent No.2 passed a detailed order dated 21-3-2006, whereby he declared that the exemption claimed by the petitioner under Section 6-A of the Central Act is not only irregular, but unlawful. Accordingly, he set aside the order of assessment and held that the turnover of Rs.2,08,93,930/- being inter-State sale of rubber sheets and adhesives is liable to be taxed at the rate of 12% in the absence of C-Forms. In compliance of that order, respondent No.1 issued notice dated 31-3-2006 and called upon the petitioner to deposit an amount of Rs.31,76,877/- by way of tax.

In the appeal preferred by the petitioner against the aforementioned order, it has been pleaded that respondent No.2 did not have the jurisdiction to create tax liability because the transactions in question were stock transfer and not inter-State sales. Along with the appeal, the petitioner filed an application for stay of the order passed by respondent No.2 and the consequential notice issued by respondent No.1. After hearing the parties, respondent No.3 dismissed the stay application by observing that respondent No.2 had revised the assessment because the goods were proved to have been sent in furtherance of prior purchase order and, therefore, the transactions were rightly treated as inter-State sales.

Sri Shaffin, learned counsel for the petitioner vehemently argued

that the failure of respondent No.3 to advert to the merits of the case and examine the petitioner's plea that the transaction in question was nothing but a stock transfer, should be treated as sufficient for nullifying the order under challenge. He further argued that the order under challenge is totally devoid of reasons and, therefore, it is liable to be declared as vitiated due to violation of the rules of natural justice. He submitted that while deciding the petitioner's prayer for stay, respondent No.3 was exercising quasi-judicial function and, therefore, he was duty-bound to record reasons for refusing to entertain the petitioner's prayer for stay.

In our opinion, there is no merit in the contentions of the learned counsel and the writ petition is liable to be dismissed summarily. A conjoint reading of notice dated 29-8-2005 and order dated 21-3-2006 shows that respondent No.2 invoked the revisional power vested in him under Section 9(2) of the Central Act because he felt prima facie convinced that the assessing authority had committed a jurisdictional error by treating the inter-State sale as stock transfer. While finally revising the assessment, respondent No.2 recorded a detailed order and held that turnover of Rs.2,08,93,930/- was inter-State sales of rubber sheets and adhesives and was liable to be taxed at the rate of 12%. Since the appeal preferred by the petitioner is pending adjudication before respondent

No.4, we do not consider it proper to express final opinion on the merits and demerits of the reasons assigned by respondent No.3 for declining the petitioner's prayer for stay, but we do not have the slightest hesitation to reject the prayer made in the writ petition for annulment of order dated 29-6-2006.

It is true that the order impugned in the writ petition does not contain detailed reasons, but that cannot be a ground for nullifying the

discretion exercised by respondent No.3 for refusing to stay the disputed demand of Rs.25,07,272/-. In its very nature, the power conferred upon respondent No.3 to stay the recovery of tax is discretionary, and unless it is shown that the exercise of that power is vitiated by an error apparent, this Court cannot interfere with the order passed by the competent authority. In this connection, we may refer to the often cited judgments of the Supreme Court in **Siliguri Municipality v. Amalendu Das**[1] and **Assistant Collector, Central Excise v. Dunlop India Ltd.**[2]**.** In first of these cases, the Supreme Court examined the legality of an interlocutory order passed by the Calcutta High Court whereby the appellant was restrained from recovering a graduated consolidated rate on the annual value of buildings in terms of the amended provisions of the Bengal Municipal Act. While reversing the order of the High Court, the Supreme Court observed:

> "We are constrained to make the observations which follow as we do feel dismayed at the tendency on the part of some of the High Courts to grant interlocutory orders for the mere asking. Normally, the High Courts should not, as a rule, in proceedings under Article 226 of the Constitution grant any stay of recovery of tax save under very exceptional circumstances. The grant of stay in such matters, should be an exception and not a rule.
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> It is needless to stress that a levy or impost does not become bad as soon as a writ petition is instituted in order to assail the validity of the levy. So also there is no warrant for presuming the levy to be bad at the very threshold of the proceedings. The only consideration at that juncture is to ensure that no prejudice is occasioned to the rate payers *in case* they ultimately succeed at the conclusion of the proceedings. This object can be attained by requiring the body

or authority levying the impost to give an undertaking to refund or adjust against future dues, the levy of tax or rate or a part thereof, as the case may be, in the event of the entire levy or a part thereof being ultimately held to be invalid by the court without obliging the tax-payers to institute a civil suit in order to claim the amount already recovered from them. On the other hand, the court cannot be unmindful of the need to protect the authority levying the tax, for, at that stage the Court has to proceed on the hypothesis that the challenge may or may not succeed. The Court has to show awareness of the fact that in a case like the present a municipality cannot function or meet its financial obligations if its source of revenue is blocked by an interim order restraining the municipality from recovering the taxes as per the impugned provision. And that the municipality has to maintain essential civic services like water supply, street lighting and public streets etc., apart from running public institutions like schools, dispensaries, libraries etc. What is more, supplies have to be purchased and salaries have to be paid. The grant of an interlocutory order of this nature would paralyze the administration and dislocate the entire working of the municipality. It seems that these serious ramifications of the matter were lost sight of while making the impugned order."

In the second case, the Supreme Court referred to some earlier judgments and observed:

"We have come across cases where the collection of public revenue has been seriously jeopardised and budgets of Governments and Local Authorities affirmatively prejudiced to the point of precariousness consequent upon interim orders made by courts. In fact, instances have come to our knowledge where Governments have been forced to explore further sources for raising revenue, sources which they would rather well leave alone in the public interest, because of the stays granted by courts. We have come across cases where an entire Service is left in a stay of flutter and unrest because of interim orders passed by courts, leaving the work they are supposed to do in a state of suspended animation. We have come across cases where buses and lorries are being run

under orders of court though they were either denied permits or their permits had been cancelled or suspended by Transport Authorities. We have come across cases where liquor shops are being run under interim orders of court. We have come across cases where the collection of monthly rentals payable by excise contractors has been stayed with the result that at the end of the year the contractor has paid nothing but made his profits from the shop and walked out. We have come across cases where dealers in food grains and essential commodities have been allowed to take back the stocks seized from them as if to permit them to continue to indulge in the very practices which were to be prevented by the seizure. We have come across cases where land reform and important welfare legislations have been stayed by courts. Incalculable harm has been done by such interim orders. All this is not to say that interim orders may never be made against public authorities. There are, of course, cases which demand that interim orders should be made in the interests of justice. Where gross violations of the law and injustices are perpetrated or are about to be perpetrated, it is the bounden duty of the court to intervene and give appropriate interim relief. In cases where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizens faith in the impartiality of public administration, a court may well be justified in granting interim relief against public authority. But since the law presumes that public authorities function properly and bona fide with due regard to the public interest, a court must be circumspect in granting interim orders of far-reaching dimensions or orders causing administrative, burdensome inconvenience or orders preventing collection of public revenue for no better reason than that the parties have come to the court alleging prejudice, inconvenience or harm and that a prima facie case has been shown. There can be and there are no hard and fast rules. But prudence, discretion and circumspection are called for. There are several other vital considerations apart from the existence of a prima facie case. There is the question of balance of convenience. There is the question of irreparable injury. There is the question of the public interest. There are many such factors worthy of

consideration. We often wonder why in the case indirect taxation where the burden has already been passed on to the consumer, any interim relief should at all be given to the manufacturer, dealer and the like !"

Keeping in view the proposition laid down in the aforementioned judgments, we hold that the petitioner has failed to make out a case for exercise of power by this Court under Article 226 of the Constitution of India for staying the recovery of tax determined by respondent No.2 and demand notice dated 31-3-2006 issued by respondent No.1.

In the result, the writ petition is dismissed. Needless to say that if the petitioner succeeds in the appeal, then it will be entitled to seek refund of the excess amount of tax deposited in compliance of order dated 21-3-2006 and demand notice dated 31-3-2006.

G.S. SINGHVI, CJ

November 15, 2006

C.V. NAGARJUNA REDDY, J

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[1] (1984) 2 SCC 436

[2] AIR 1985 SC 330 = (1985) 1 SCC 260